

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

January 12, 2012

Charles Robinson
600 Lakelawn Drive
Milford, DE 19963

RE: State of Delaware v. Charles W. Robinson
Defendant ID No. 0706033362 (R-1)
Defendant ID No. 0707022306 (R-1)

Dear Mr. Robinson:

Before the Court are two Motions for Post Conviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"), and a Motion to Correct an Illegal Sentence. For the reasons stated below, the two Motions for Post Conviction are denied and the Motion to Correct an Illegal Sentence is granted.

Assault - Defendant ID No. 0706033362

On January 9, 2008, Mr. Robinson entered into a guilty plea to Assault in the Second Degree before Judge E. Scott Bradley. The Court accepted the negotiated recommendation and Mr. Robinson was sentenced to 8 years at supervision Level V, with credit for 23 days, with the balance being suspended for 1 year at supervision Level III probation. Mr. Robinson did not file a direct appeal from the entry of the guilty plea.

Mr. Robinson filed a Post Conviction Motion alleging he was on medication during the time in which he entered the plea and was not capable of entering a knowing, voluntary, and intelligent plea. Mr. Robinson alleges his attorney kept him in the dark and was not professional. Mr. Robinson claims the plea bargain was no bargain. Mr. Robinson maintains his innocence.

These claims are procedurally barred pursuant to Rule 61(i)(1). Mr. Robinson was sentenced to 1 year at supervision Level V, beginning on January 9, 2008. The filing of this motion is time-barred.

Mr. Robinson's allegations that he was too medicated to understand the guilty plea protocol and colloquy does not excuse the late filing pursuant to Rule 61(i)(5). The plea colloquy evidences Mr. Robinson was placed under oath and specifically discussed his mental health issues with Judge

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Bradley. Mr. Robinson informed the Court that he was taking the anti-depressant, Celexa, and that the medication did not affect his understanding of the entry of the guilty plea. Mr. Robinson also stated he was satisfied with his attorney's representation.

Mr. Robinson has offered nothing to support the Motion for Post Conviction other than a twenty-two page rambling stream of consciousness that is irrelevant to the motion.

Therefore, relying on Mr. Robinson's sworn statements to the Court, the Motion for Post Conviction filed on November 16, 2011, must be procedurally barred pursuant to Rule 61(i)(1) because it was filed over 3 ½ years from the entry of Mr. Robinson's guilty plea.

Delivery - Defendant ID No. 0707022306

On December, 5, 2007, Mr. Robinson entered a guilty plea to Delivery of Amphetamine. With the benefit of an updated TASC report and a pre-sentence investigation report, Mr. Robinson was sentenced on January 25, 2008, to 12 years at supervision Level V, with credit for 121 days, suspended after 4 years and the successful completion of the Level V Key Program, for 1 year at supervision Level IV Home Confinement, followed by 18 months at supervision Level III. Mr. Robinson did not file a direct appeal from the entry of the guilty plea.

It is the Court's understanding that Mr. Robinson has recently, and successfully, completed the supervision Level V Key Program and has begun the supervision Level IV Home Confinement portion of his sentence.

Mr. Robinson has filed a Motion for Post Conviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") claiming his medications prevented him from knowingly, voluntarily, and intelligently entering the guilty plea. This allegation is the same attack Mr. Robinson made as to the aforementioned assault conviction. In Mr. Robinson's 57 page attachment he complains his attorney really was not on "his team", did not file a Motion to Dismiss or a Motion to Suppress the evidence, and basically failed to prepare a winning case. Although Mr. Robinson's filing exceeds 57 pages, these allegations are conclusory in that they are neither concrete and specific allegations of error or omission, nor do they contain any allegations of specific prejudice. This filing is mostly a rambling stream of consciousness about matters in Mr. Robinson's life that are irrelevant to the motion. Finally, Mr. Robinson also complains about the police.

Mr. Robinson's claims are procedurally barred pursuant to Rule 61(i)(1). Mr. Robinson had one year, commencing on January 25, 2008, to file a Motion for Post Conviction Relief. Thus, the Motion filed on October 20, 2011, is time-barred.

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As with the above claim, there exists no basis for a waiver or excuse pursuant to Rule 61(i)(5).

On December 5, 2007, at the time the Court accepted Mr. Robinson's plea, the Court asked if Mr. Robinson would truthfully answer the questions. Mr. Robinson said "Yes, sir", and thereafter a full and thorough plea colloquy took place. Mr. Robinson has a long history with Superior Court and Superior Court's Drug Court Program. Mr. Robinson informed the Court that he was taking anti-depressant medication but only just what the doctor tells him to take and in the amounts prescribed by his doctor. Mr. Robinson noted on the guilty plea form that he was not under the influence of any drugs. Mr. Robinson was alert and not under the influence of any medication which affected his cognitive abilities to knowingly, voluntarily, and intelligently enter the plea. The Court also notes that Mr. Robinson stated he was satisfied with his attorney and had no complaints about his representation.

Mr. Robinson offers no evidence to dispute what the record clearly establishes. Therefore, the Post Conviction Motion filed on October 20, 2011, must likewise be procedurally barred as being filed years too late.

Motion for Correction of Illegal Sentence
Defendant I D No. 0707022306

In this motion Mr. Robinson notes that the maximum sentence for the Delivery of Amphetamines, (Adderal), is only 5 years and not 15 years as noted in the plea paperwork. The pre-sentence report also noted a statutory range of 15 years.

The Court is satisfied Mr. Robinson is correct and the sentence imposed on January 25, 2008, is illegal. This Motion is granted and you will be re-sentenced on **Friday, January 27, 2012, at 9:30 a.m.** in Superior Court for Sussex County.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

THG:pac

cc: Prothonotary
John Donahue, Esquire
John Daniello, Esquire